

ASSEMBLY BILL

No. 1585

**Introduced by Assembly Member Alejo
(Coauthor: Assembly Member Skinner)**

February 3, 2014

An act to amend Sections 8712, 8811, and 8908 of the Family Code, and to amend Section 11105 of, and to add Section 1203.49 to, the Penal Code, relating to human trafficking.

LEGISLATIVE COUNSEL'S DIGEST

AB 1585, as introduced, Alejo. Human trafficking.

Existing law defines and proscribes the crimes of human trafficking, solicitation, and prostitution. Existing law authorizes a court, in its discretion and in the interests of justice, to grant various forms of relief to a petitioner who completes conditions of probation, including the dismissal of the accusation or information against that person.

Existing law requires the Department of Justice to maintain state summary criminal history information, and to furnish that information to specified entities for various purposes, including for purposes of fulfilling employment, licensing, and certification requirements. Existing law also authorizes the State Department of Social Services and county or licensed adoption agencies to secure a person's full criminal record in connection with an adoption application, as specified.

This bill would provide that if a defendant has been convicted of solicitation or prostitution and has completed any term of probation for that conviction, the defendant may petition the court for relief if the defendant can establish by clear and convincing evidence that the conviction was the result of his or her status as a victim of human trafficking, and would authorize a court to issue an order that (1) sets

forth a finding that the defendant was a victim of human trafficking, as specified, (2) dismisses the accusation or information against the defendant, or orders other relief, and (3) notifies the department that the defendant was a victim of human trafficking when he or she committed the crime and the relief that has been ordered.

The bill would also exclude records of conviction for which the relief described above has been granted from the criminal records that may be disseminated for various purposes, including the full criminal record obtained in connection with an adoption application.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 8712 of the Family Code is amended to
2 read:
3 8712. (a) The department, county adoption agency, or licensed
4 adoption agency shall require each person filing an application for
5 adoption to be fingerprinted and shall secure from an appropriate
6 law enforcement agency any criminal record of that person to
7 determine whether the person has ever been convicted of a crime
8 other than a minor traffic violation. The department, county
9 adoption agency, or licensed adoption agency may also secure the
10 person's full criminal record, if any, *with the exception of any*
11 *convictions for which relief has been granted pursuant to Section*
12 *1203.49 of the Penal Code.* Any federal-level criminal offender
13 record requests to the Department of Justice shall be submitted
14 with fingerprint images and related information required by the
15 Department of Justice for the purposes of obtaining information
16 as to the existence and content of a record of an out-of-state or
17 federal conviction or arrest of a person or information regarding
18 any out-of-state or federal crimes or arrests for which the
19 Department of Justice establishes that the person is free on bail,
20 or on his or her own recognizance pending trial or appeal. The
21 Department of Justice shall forward to the Federal Bureau of
22 Investigation any requests for federal summary criminal history
23 information received pursuant to this section. The Department of
24 Justice shall review the information returned from the Federal
25 Bureau of Investigation and shall compile and disseminate a

1 response to the department, county adoption agency, or licensed
2 adoption agency.

3 (b) Notwithstanding subdivision (c), the criminal record, if any,
4 shall be taken into consideration when evaluating the prospective
5 adoptive parent, and an assessment of the effects of any criminal
6 history on the ability of the prospective adoptive parent to provide
7 adequate and proper care and guidance to the child shall be
8 included in the report to the court.

9 (c) (1) Under no circumstances shall the department, county
10 adoption agency, or licensed adoption agency give final approval
11 for an adoptive placement in any home where the prospective
12 adoptive parent or any adult living in the prospective adoptive
13 home has either of the following:

14 (A) A felony conviction for child abuse or neglect, spousal
15 abuse, crimes against a child, including child pornography, or for
16 a crime involving violence, including rape, sexual assault, or
17 homicide, but not including other physical assault and battery. For
18 purposes of this subdivision, crimes involving violence means
19 those violent crimes contained in clause (i) of subparagraph (A),
20 and subparagraph (B), of paragraph (1) of subdivision (g) of
21 Section 1522 of the Health and Safety Code.

22 (B) A felony conviction that occurred within the last five years
23 for physical assault, battery, or a drug- or alcohol-related offense.

24 (2) This subdivision shall become operative on October 1, 2008,
25 and shall remain operative only to the extent that compliance with
26 its provisions is required by federal law as a condition of receiving
27 funding under Title IV-E of the federal Social Security Act (42
28 U.S.C. Sec. 670 and following).

29 (d) Any fee charged by a law enforcement agency for
30 fingerprinting or for checking or obtaining the criminal record of
31 the applicant shall be paid by the applicant. The department, county
32 adoption agency, or licensed adoption agency may defer, waive,
33 or reduce the fee when its payment would cause economic hardship
34 to prospective adoptive parents detrimental to the welfare of the
35 adopted child, when the child has been in the foster care of the
36 prospective adoptive parents for at least one year, or if necessary
37 for the placement of a special-needs child.

38 SEC. 2. Section 8811 of the Family Code is amended to read:

39 8811. (a) The department or delegated county adoption agency
40 shall require each person filing an adoption petition to be

1 fingerprinted and shall secure from an appropriate law enforcement
2 agency any criminal record of that person to determine whether
3 the person has ever been convicted of a crime other than a minor
4 traffic violation. The department or delegated county adoption
5 agency may also secure the person's full criminal record, if any,
6 *with the exception of any convictions for which relief has been*
7 *granted pursuant to Section 1203.49 of the Penal Code.* Any
8 federal-level criminal offender record requests to the Department
9 of Justice shall be submitted with fingerprint images and related
10 information required by the Department of Justice for the purposes
11 of obtaining information as to the existence and content of a record
12 of an out-of-state or federal conviction or arrest of a person or
13 information regarding any out-of-state or federal crimes or arrests
14 for which the Department of Justice establishes that the person is
15 free on bail, or on his or her own recognizance pending trial or
16 appeal. The Department of Justice shall forward to the Federal
17 Bureau of Investigation any requests for federal summary criminal
18 history information received pursuant to this section. The
19 Department of Justice shall review the information returned from
20 the Federal Bureau of Investigation and shall compile and
21 disseminate a response to the department or delegated county
22 adoption agency.

23 (b) Notwithstanding subdivision (c), the criminal record, if any,
24 shall be taken into consideration when evaluating the prospective
25 adoptive parent, and an assessment of the effects of any criminal
26 history on the ability of the prospective adoptive parent to provide
27 adequate and proper care and guidance to the child shall be
28 included in the report to the court.

29 (c) (1) Under no circumstances shall the department or a
30 delegated county adoption agency give final approval for an
31 adoptive placement in any home where the prospective adoptive
32 parent or any adult living in the prospective adoptive home has
33 either of the following:

34 (A) A felony conviction for child abuse or neglect, spousal
35 abuse, crimes against a child, including child pornography, or for
36 a crime involving violence, including rape, sexual assault, or
37 homicide, but not including other physical assault and battery. For
38 purposes of this subdivision, crimes involving violence means
39 those violent crimes contained in clause (i) of subparagraph (A),

1 and subparagraph (B), of paragraph (1) of subdivision (g) of
2 Section 1522 of the Health and Safety Code.

3 (B) A felony conviction that occurred within the last five years
4 for physical assault, battery, or a drug- or alcohol-related offense.

5 (2) This subdivision shall become operative on October 1, 2008,
6 and shall remain operative only to the extent that compliance with
7 its provisions is required by federal law as a condition of receiving
8 funding under Title IV-E of the federal Social Security Act (42
9 U.S.C. 670 and following).

10 (d) Any fee charged by a law enforcement agency for
11 fingerprinting or for checking or obtaining the criminal record of
12 the petitioner shall be paid by the petitioner. The department or
13 delegated county adoption agency may defer, waive, or reduce the
14 fee when its payment would cause economic hardship to the
15 prospective adoptive parents detrimental to the welfare of the
16 adopted child, when the child has been in the foster care of the
17 prospective adoptive parents for at least one year, or if necessary
18 for the placement of a special-needs child.

19 SEC. 3. Section 8908 of the Family Code is amended to read:

20 8908. (a) A licensed adoption agency shall require each person
21 filing an application for adoption to be fingerprinted and shall
22 secure from an appropriate law enforcement agency any criminal
23 record of that person to determine whether the person has ever
24 been convicted of a crime other than a minor traffic violation. The
25 licensed adoption agency may also secure the person's full criminal
26 record, if any, *with the exception of any convictions for which*
27 *relief has been granted pursuant to Section 1203.49 of the Penal*
28 *Code*. Any federal-level criminal offender record requests to the
29 Department of Justice shall be submitted with fingerprint images
30 and related information required by the Department of Justice for
31 the purposes of obtaining information as to the existence and
32 content of a record of an out-of-state or federal conviction or arrest
33 of a person or information regarding any out-of-state or federal
34 crimes or arrests for which the Department of Justice establishes
35 that the person is free on bail, or on his or her own recognizance
36 pending trial or appeal. The Department of Justice shall forward
37 to the Federal Bureau of Investigation any requests for federal
38 summary criminal history information received pursuant to this
39 section. The Department of Justice shall review the information
40 returned from the Federal Bureau of Investigation and shall compile

1 and disseminate a fitness determination to the licensed adoption
2 agency.

3 (b) Notwithstanding subdivision (c), the criminal record, if any,
4 shall be taken into consideration when evaluating the prospective
5 adoptive parent, and an assessment of the effects of any criminal
6 history on the ability of the prospective adoptive parent to provide
7 adequate and proper care and guidance to the child shall be
8 included in the report to the court.

9 (c) (1) Under no circumstances shall a licensed adoption agency
10 give final approval for an adoptive placement in any home where
11 the prospective adoptive parent or any adult living in the
12 prospective adoptive home, has a felony conviction for either of
13 the following:

14 (A) Any felony conviction for child abuse or neglect, spousal
15 abuse, crimes against a child, including child pornography, or for
16 a crime involving violence, including rape, sexual assault, or
17 homicide, but not including other physical assault and battery. For
18 purposes of this subdivision, crimes involving violence means
19 those violent crimes contained in clause (i) of subparagraph (A),
20 and subparagraph (B), of paragraph (1) of subdivision (g) of
21 Section 1522 of the Health and Safety Code.

22 (B) A felony conviction that occurred within the last five years
23 for physical assault, battery, or a drug- or alcohol-related offense.

24 (2) This subdivision shall become operative on October 1, 2008,
25 and shall remain operative only to the extent that compliance with
26 its provisions is required by federal law as a condition of receiving
27 funding under Title IV-E of the federal Social Security Act (42
28 U.S.C. 670 and following).

29 (d) Any fee charged by a law enforcement agency for
30 fingerprinting or for checking or obtaining the criminal record of
31 the applicant shall be paid by the applicant. The licensed adoption
32 agency may defer, waive, or reduce the fee when its payment would
33 cause economic hardship to the prospective adoptive parents
34 detrimental to the welfare of the adopted child.

35 SEC. 4. Section 1203.49 is added to the Penal Code, to read:

36 1203.49. If a defendant has been convicted of solicitation or
37 prostitution, as described in subdivision (b) of Section 647, and if
38 the defendant has completed any term of probation for that
39 conviction, the defendant may petition the court for relief under
40 this section. If the defendant can establish by clear and convincing

1 evidence that the conviction was the result of his or her status as
2 a victim of human trafficking, the court may issue an order that
3 does all of the following:

4 (a) Sets forth a finding that the petitioner was a victim of human
5 trafficking when he or she committed the crime.

6 (b) Orders any of the relief described in Section 1203.4.

7 (c) Notifies the Department of Justice that the petitioner was a
8 victim of human trafficking when he or she committed the crime
9 and the relief that has been ordered.

10 SEC. 5. Section 11105 of the Penal Code is amended to read:

11 11105. (a) (1) The Department of Justice shall maintain state
12 summary criminal history information.

13 (2) As used in this section:

14 (A) “State summary criminal history information” means the
15 master record of information compiled by the Attorney General
16 pertaining to the identification and criminal history of any person,
17 such as name, date of birth, physical description, fingerprints,
18 photographs, dates of arrests, arresting agencies and booking
19 numbers, charges, dispositions, and similar data about the person.

20 (B) “State summary criminal history information” does not refer
21 to records and data compiled by criminal justice agencies other
22 than the Attorney General, nor does it refer to records of complaints
23 to or investigations conducted by, or records of intelligence
24 information or security procedures of, the office of the Attorney
25 General and the Department of Justice.

26 (b) The Attorney General shall furnish state summary criminal
27 history information to any of the following, if needed in the course
28 of their duties, provided that when information is furnished to
29 assist an agency, officer, or official of state or local government,
30 a public utility, or any other entity, in fulfilling employment,
31 certification, or licensing duties, Chapter 1321 of the Statutes of
32 1974 and Section 432.7 of the Labor Code shall apply:

33 (1) The courts of the state.

34 (2) Peace officers of the state, as defined in Section 830.1,
35 subdivisions (a) and (e) of Section 830.2, subdivision (a) of Section
36 830.3, *subdivision (a) of Section 830.31*, and subdivisions (a) and
37 (b) of Section 830.5, ~~and subdivision (a) of Section 830.31~~.

38 (3) District attorneys of the state.

39 (4) Prosecuting city attorneys of any city within the state.

1 (5) City attorneys pursuing civil gang injunctions pursuant to
2 Section 186.22a, or drug abatement actions pursuant to Section
3 3479 or 3480 of the Civil Code, or Section 11571 of the Health
4 and Safety Code.

5 (6) Probation officers of the state.

6 (7) Parole officers of the state.

7 (8) A public defender or attorney of record when representing
8 a person in proceedings upon a petition for a certificate of
9 rehabilitation and pardon pursuant to Section 4852.08.

10 (9) A public defender or attorney of record when representing
11 a person in a criminal case, or a parole, mandatory supervision
12 pursuant to paragraph (5) of subdivision (h) of Section 1170, or
13 postrelease community supervision revocation or revocation
14 extension proceeding, and if authorized access by statutory or
15 decisional law.

16 (10) Any agency, officer, or official of the state if the criminal
17 history information is required to implement a statute or regulation
18 that expressly refers to specific criminal conduct applicable to the
19 subject person of the state summary criminal history information,
20 and contains requirements or exclusions, or both, expressly based
21 upon that specified criminal conduct. The agency, officer, or
22 official of the state authorized by this paragraph to receive state
23 summary criminal history information may also transmit fingerprint
24 images and related information to the Department of Justice to be
25 transmitted to the Federal Bureau of Investigation.

26 (11) Any city or county, city and county, district, or any officer
27 or official thereof if access is needed in order to assist that agency,
28 officer, or official in fulfilling employment, certification, or
29 licensing duties, and if the access is specifically authorized by the
30 city council, board of supervisors, or governing board of the city,
31 county, or district if the criminal history information is required
32 to implement a statute, ordinance, or regulation that expressly
33 refers to specific criminal conduct applicable to the subject person
34 of the state summary criminal history information, and contains
35 requirements or exclusions, or both, expressly based upon that
36 specified criminal conduct. The city or county, city and county,
37 district, or the officer or official thereof authorized by this
38 paragraph may also transmit fingerprint images and related
39 information to the Department of Justice to be transmitted to the
40 Federal Bureau of Investigation.

1 (12) The subject of the state summary criminal history
2 information under procedures established under Article 5
3 (commencing with Section 11120).

4 (13) Any person or entity when access is expressly authorized
5 by statute if the criminal history information is required to
6 implement a statute or regulation that expressly refers to specific
7 criminal conduct applicable to the subject person of the state
8 summary criminal history information, and contains requirements
9 or exclusions, or both, expressly based upon that specified criminal
10 conduct.

11 (14) Health officers of a city, county, city and county, or district
12 when in the performance of their official duties enforcing Section
13 120175 of the Health and Safety Code.

14 (15) Any managing or supervising correctional officer of a
15 county jail or other county correctional facility.

16 (16) Any humane society, or society for the prevention of cruelty
17 to animals, for the specific purpose of complying with Section
18 14502 of the Corporations Code for the appointment of humane
19 officers.

20 (17) Local child support agencies established by Section 17304
21 of the Family Code. When a local child support agency closes a
22 support enforcement case containing summary criminal history
23 information, the agency shall delete or purge from the file and
24 destroy any documents or information concerning or arising from
25 offenses for or of which the parent has been arrested, charged, or
26 convicted, other than for offenses related to the parent's having
27 failed to provide support for minor children, consistent with the
28 requirements of Section 17531 of the Family Code.

29 (18) County child welfare agency personnel who have been
30 delegated the authority of county probation officers to access state
31 summary criminal history information pursuant to Section 272 of
32 the Welfare and Institutions Code for the purposes specified in
33 Section 16504.5 of the Welfare and Institutions Code. Information
34 from criminal history records provided pursuant to this subdivision
35 shall not be used for any purposes other than those specified in
36 this section and Section 16504.5 of the Welfare and Institutions
37 Code. When an agency obtains records obtained both on the basis
38 of name checks and fingerprint checks, final placement decisions
39 shall be based only on the records obtained pursuant to the
40 fingerprint check.

1 (19) The court of a tribe, or court of a consortium of tribes, that
2 has entered into an agreement with the state pursuant to Section
3 10553.1 of the Welfare and Institutions Code. This information
4 may be used only for the purposes specified in Section 16504.5
5 of the Welfare and Institutions Code and for tribal approval or
6 tribal licensing of foster care or adoptive homes. Article 6
7 (commencing with Section 11140) shall apply to officers, members,
8 and employees of a tribal court receiving criminal record offender
9 information pursuant to this section.

10 (20) Child welfare agency personnel of a tribe or consortium
11 of tribes that has entered into an agreement with the state pursuant
12 to Section 10553.1 of the Welfare and Institutions Code and to
13 whom the state has delegated duties under paragraph (2) of
14 subdivision (a) of Section 272 of the Welfare and Institutions Code.
15 The purposes for use of the information shall be for the purposes
16 specified in Section 16504.5 of the Welfare and Institutions Code
17 and for tribal approval or tribal licensing of foster care or adoptive
18 homes. When an agency obtains records on the basis of name
19 checks and fingerprint checks, final placement decisions shall be
20 based only on the records obtained pursuant to the fingerprint
21 check. Article 6 (commencing with Section 11140) shall apply to
22 child welfare agency personnel receiving criminal record offender
23 information pursuant to this section.

24 (21) An officer providing conservatorship investigations
25 pursuant to Sections 5351, 5354, and 5356 of the Welfare and
26 Institutions Code.

27 (22) A court investigator providing investigations or reviews
28 in conservatorships pursuant to Section 1826, 1850, 1851, or
29 2250.6 of the Probate Code.

30 (23) A person authorized to conduct a guardianship investigation
31 pursuant to Section 1513 of the Probate Code.

32 (24) A humane officer pursuant to Section 14502 of the
33 Corporations Code for the purposes of performing his or her duties.

34 (25) A public agency described in subdivision (b) of Section
35 15975 of the Government Code, for the purpose of oversight and
36 enforcement policies with respect to its contracted providers.

37 (c) The Attorney General may furnish state summary criminal
38 history information and, when specifically authorized by this
39 subdivision, federal level criminal history information upon a
40 showing of a compelling need to any of the following, provided

1 that when information is furnished to assist an agency, officer, or
2 official of state or local government, a public utility, or any other
3 entity in fulfilling employment, certification, or licensing duties,
4 Chapter 1321 of the Statutes of 1974 and Section 432.7 of the
5 Labor Code shall apply:

6 (1) Any public utility, as defined in Section 216 of the Public
7 Utilities Code, that operates a nuclear energy facility when access
8 is needed in order to assist in employing persons to work at the
9 facility, provided that, if the Attorney General supplies the data,
10 he or she shall furnish a copy of the data to the person to whom
11 the data relates.

12 (2) To a peace officer of the state other than those included in
13 subdivision (b).

14 (3) To an illegal dumping enforcement officer as defined in
15 subdivision (j) of Section 830.7.

16 (4) To a peace officer of another country.

17 (5) To public officers, other than peace officers, of the United
18 States, other states, or possessions or territories of the United
19 States, provided that access to records similar to state summary
20 criminal history information is expressly authorized by a statute
21 of the United States, other states, or possessions or territories of
22 the United States if the information is needed for the performance
23 of their official duties.

24 (6) To any person when disclosure is requested by a probation,
25 parole, or peace officer with the consent of the subject of the state
26 summary criminal history information and for purposes of
27 furthering the rehabilitation of the subject.

28 (7) The courts of the United States, other states, or territories
29 or possessions of the United States.

30 (8) Peace officers of the United States, other states, or territories
31 or possessions of the United States.

32 (9) To any individual who is the subject of the record requested
33 if needed in conjunction with an application to enter the United
34 States or any foreign nation.

35 (10) (A) (i) Any public utility, as defined in Section 216 of the
36 Public Utilities Code, or any cable corporation as defined in
37 subparagraph (B), if receipt of criminal history information is
38 needed in order to assist in employing current or prospective
39 employees, contract employees, or subcontract employees who,
40 in the course of their employment may be seeking entrance to

1 private residences or adjacent grounds. The information provided
2 shall be limited to the record of convictions and any arrest for
3 which the person is released on bail or on his or her own
4 recognizance pending trial.

5 (ii) If the Attorney General supplies the data pursuant to this
6 paragraph, the Attorney General shall furnish a copy of the data
7 to the current or prospective employee to whom the data relates.

8 (iii) Any information obtained from the state summary criminal
9 history is confidential and the receiving public utility or cable
10 corporation shall not disclose its contents, other than for the
11 purpose for which it was acquired. The state summary criminal
12 history information in the possession of the public utility or cable
13 corporation and all copies made from it shall be destroyed not
14 more than 30 days after employment or promotion or transfer is
15 denied or granted, except for those cases where a current or
16 prospective employee is out on bail or on his or her own
17 recognizance pending trial, in which case the state summary
18 criminal history information and all copies shall be destroyed not
19 more than 30 days after the case is resolved.

20 (iv) A violation of this paragraph is a misdemeanor, and shall
21 give the current or prospective employee who is injured by the
22 violation a cause of action against the public utility or cable
23 corporation to recover damages proximately caused by the
24 violations. Any public utility's or cable corporation's request for
25 state summary criminal history information for purposes of
26 employing current or prospective employees who may be seeking
27 entrance to private residences or adjacent grounds in the course
28 of their employment shall be deemed a "compelling need" as
29 required to be shown in this subdivision.

30 (v) Nothing in this section shall be construed as imposing any
31 duty upon public utilities or cable corporations to request state
32 summary criminal history information on any current or prospective
33 employees.

34 (B) For purposes of this paragraph, "cable corporation" means
35 any corporation or firm that transmits or provides television,
36 computer, or telephone services by cable, digital, fiber optic,
37 satellite, or comparable technology to subscribers for a fee.

38 (C) Requests for federal level criminal history information
39 received by the Department of Justice from entities authorized
40 pursuant to subparagraph (A) shall be forwarded to the Federal

1 Bureau of Investigation by the Department of Justice. Federal level
2 criminal history information received or compiled by the
3 Department of Justice may then be disseminated to the entities
4 referenced in subparagraph (A), as authorized by law.

5 (D) (i) Authority for a cable corporation to request state or
6 federal level criminal history information under this paragraph
7 shall commence July 1, 2005.

8 (ii) Authority for a public utility to request federal level criminal
9 history information under this paragraph shall commence July 1,
10 2005.

11 (11) To any campus of the California State University or the
12 University of California, or any four year college or university
13 accredited by a regional accreditation organization approved by
14 the United States Department of Education, if needed in
15 conjunction with an application for admission by a convicted felon
16 to any special education program for convicted felons, including,
17 but not limited to, university alternatives and halfway houses. Only
18 conviction information shall be furnished. The college or university
19 may require the convicted felon to be fingerprinted, and any inquiry
20 to the department under this section shall include the convicted
21 felon's fingerprints and any other information specified by the
22 department.

23 (12) To any foreign government, if requested by the individual
24 who is the subject of the record requested, if needed in conjunction
25 with the individual's application to adopt a minor child who is a
26 citizen of that foreign nation. Requests for information pursuant
27 to this paragraph shall be in accordance with the process described
28 in Sections 11122 to 11124, inclusive. The response shall be
29 provided to the foreign government or its designee and to the
30 individual who requested the information.

31 (d) Whenever an authorized request for state summary criminal
32 history information pertains to a person whose fingerprints are on
33 file with the Department of Justice and the department has no
34 criminal history of that person, and the information is to be used
35 for employment, licensing, or certification purposes, the fingerprint
36 card accompanying the request for information, if any, may be
37 stamped "no criminal record" and returned to the person or entity
38 making the request.

39 (e) Whenever state summary criminal history information is
40 furnished as the result of an application and is to be used for

1 employment, licensing, or certification purposes, the Department
2 of Justice may charge the person or entity making the request a
3 fee that it determines to be sufficient to reimburse the department
4 for the cost of furnishing the information. In addition, the
5 Department of Justice may add a surcharge to the fee to fund
6 maintenance and improvements to the systems from which the
7 information is obtained. Notwithstanding any other law, any person
8 or entity required to pay a fee to the department for information
9 received under this section may charge the applicant a fee sufficient
10 to reimburse the person or entity for this expense. All moneys
11 received by the department pursuant to this section, Sections
12 11105.3 and 26190, and former Section 13588 of the Education
13 Code shall be deposited in a special account in the General Fund
14 to be available for expenditure by the department to offset costs
15 incurred pursuant to those sections and for maintenance and
16 improvements to the systems from which the information is
17 obtained upon appropriation by the Legislature.

18 (f) Whenever there is a conflict, the processing of criminal
19 fingerprints and fingerprints of applicants for security guard or
20 alarm agent registrations or firearms qualification permits
21 submitted pursuant to Section 7583.9, 7583.23, 7596.3, or 7598.4
22 of the Business and Professions Code shall take priority over the
23 processing of other applicant fingerprints.

24 (g) It is not a violation of this section to disseminate statistical
25 or research information obtained from a record, provided that the
26 identity of the subject of the record is not disclosed.

27 (h) It is not a violation of this section to include information
28 obtained from a record in (1) a transcript or record of a judicial or
29 administrative proceeding or (2) any other public record if the
30 inclusion of the information in the public record is authorized by
31 a court, statute, or decisional law.

32 (i) Notwithstanding any other law, the Department of Justice
33 or any state or local law enforcement agency may require the
34 submission of fingerprints for the purpose of conducting summary
35 criminal history information checks that are authorized by law.

36 (j) The state summary criminal history information shall include
37 any finding of mental incompetence pursuant to Chapter 6
38 (commencing with Section 1367) of Title 10 of Part 2 arising out
39 of a complaint charging a felony offense specified in Section 290.

1 (k) (1) This subdivision shall apply whenever state or federal
2 summary criminal history information is furnished by the
3 Department of Justice as the result of an application by an
4 authorized agency or organization and the information is to be
5 used for peace officer employment or certification purposes. As
6 used in this subdivision, a peace officer is defined in Chapter 4.5
7 (commencing with Section 830) of Title 3 of Part 2.

8 (2) Notwithstanding any other provision of law, whenever state
9 summary criminal history information is initially furnished
10 pursuant to paragraph (1), the Department of Justice shall
11 disseminate the following information:

12 (A) Every conviction rendered against the applicant.

13 (B) Every arrest for an offense for which the applicant is
14 presently awaiting trial, whether the applicant is incarcerated or
15 has been released on bail or on his or her own recognizance
16 pending trial.

17 (C) Every arrest or detention, except for an arrest or detention
18 resulting in an exoneration, provided, however, that where the
19 records of the Department of Justice do not contain a disposition
20 for the arrest, the Department of Justice first makes a genuine effort
21 to determine the disposition of the arrest.

22 (D) Every successful diversion.

23 (E) Every date and agency name associated with all retained
24 peace officer or nonsworn law enforcement agency employee
25 preemployment criminal offender record information search
26 requests.

27 (l) (1) This subdivision shall apply whenever state or federal
28 summary criminal history information is furnished by the
29 Department of Justice as the result of an application by a criminal
30 justice agency or organization as defined in Section 13101, and
31 the information is to be used for criminal justice employment,
32 licensing, or certification purposes.

33 (2) Notwithstanding any other provision of law, whenever state
34 summary criminal history information is initially furnished
35 pursuant to paragraph (1), the Department of Justice shall
36 disseminate the following information:

37 (A) Every conviction rendered against the applicant.

38 (B) Every arrest for an offense for which the applicant is
39 presently awaiting trial, whether the applicant is incarcerated or

1 has been released on bail or on his or her own recognizance
2 pending trial.

3 (C) Every arrest for an offense for which the records of the
4 Department of Justice do not contain a disposition or did not result
5 in a conviction, provided that the Department of Justice first makes
6 a genuine effort to determine the disposition of the arrest. However,
7 information concerning an arrest shall not be disclosed if the
8 records of the Department of Justice indicate or if the genuine
9 effort reveals that the subject was exonerated, successfully
10 completed a diversion or deferred entry of judgment program, or
11 the arrest was deemed a detention.

12 (D) Every date and agency name associated with all retained
13 peace officer or nonsworn law enforcement agency employee
14 preemployment criminal offender record information search
15 requests.

16 (m) (1) This subdivision shall apply whenever state or federal
17 summary criminal history information is furnished by the
18 Department of Justice as the result of an application by an
19 authorized agency or organization pursuant to Section 1522,
20 1568.09, 1569.17, or 1596.871 of the Health and Safety Code, or
21 any statute that incorporates the criteria of any of those sections
22 or this subdivision by reference, and the information is to be used
23 for employment, licensing, or certification purposes.

24 (2) Notwithstanding any other provision of law, whenever state
25 summary criminal history information is initially furnished
26 pursuant to paragraph (1), the Department of Justice shall
27 disseminate the following information:

28 (A) Every conviction of an offense rendered against the
29 applicant, *except a conviction for which relief has been granted*
30 *pursuant to Section 1203.49.*

31 (B) Every arrest for an offense for which the applicant is
32 presently awaiting trial, whether the applicant is incarcerated or
33 has been released on bail or on his or her own recognizance
34 pending trial.

35 (C) Every arrest for an offense for which the Department of
36 Social Services is required by paragraph (1) of subdivision (a) of
37 Section 1522 of the Health and Safety Code to determine if an
38 applicant has been arrested. However, if the records of the
39 Department of Justice do not contain a disposition for an arrest,

1 the Department of Justice shall first make a genuine effort to
2 determine the disposition of the arrest.

3 (3) Notwithstanding the requirements of the sections referenced
4 in paragraph (1) of this subdivision, the Department of Justice
5 shall not disseminate information about an arrest subsequently
6 deemed a detention or an arrest that resulted in either the successful
7 completion of a diversion program or exoneration.

8 (n) (1) This subdivision shall apply whenever state or federal
9 summary criminal history information, to be used for employment,
10 licensing, or certification purposes, is furnished by the Department
11 of Justice as the result of an application by an authorized agency,
12 organization, or individual pursuant to any of the following:

13 (A) Paragraph~~(9)~~ (10) of subdivision (c), when the information
14 is to be used by a cable corporation.

15 (B) Section 11105.3 or 11105.4.

16 (C) Section 15660 of the Welfare and Institutions Code.

17 (D) Any statute that incorporates the criteria of any of the
18 statutory provisions listed in subparagraph (A), (B), or (C), or of
19 this subdivision, by reference.

20 (2) With the exception of applications submitted by
21 transportation companies authorized pursuant to Section 11105.3,
22 and notwithstanding any other provision of law, whenever state
23 summary criminal history information is initially furnished
24 pursuant to paragraph (1), the Department of Justice shall
25 disseminate the following information:

26 (A) Every conviction, *except a conviction for which relief has*
27 *been granted pursuant to Section 1203.49*, rendered against the
28 applicant for a violation or attempted violation of any offense
29 specified in subdivision (a) of Section 15660 of the Welfare and
30 Institutions Code. However, with the exception of those offenses
31 for which registration is required pursuant to Section 290, the
32 Department of Justice shall not disseminate information pursuant
33 to this subdivision unless the conviction occurred within 10 years
34 of the date of the agency's request for information or the conviction
35 is over 10 years old but the subject of the request was incarcerated
36 within 10 years of the agency's request for information.

37 (B) Every arrest for a violation or attempted violation of an
38 offense specified in subdivision (a) of Section 15660 of the Welfare
39 and Institutions Code for which the applicant is presently awaiting

1 trial, whether the applicant is incarcerated or has been released on
2 bail or on his or her own recognizance pending trial.

3 (o) (1) This subdivision shall apply whenever state or federal
4 summary criminal history information is furnished by the
5 Department of Justice as the result of an application by an
6 authorized agency or organization pursuant to Section 379 or 550
7 of the Financial Code, or any statute that incorporates the criteria
8 of either of those sections or this subdivision by reference, and the
9 information is to be used for employment, licensing, or certification
10 purposes.

11 (2) Notwithstanding any other provision of law, whenever state
12 summary criminal history information is initially furnished
13 pursuant to paragraph (1), the Department of Justice shall
14 disseminate the following information:

15 (A) Every conviction rendered against the applicant for a
16 violation or attempted violation of any offense specified in Section
17 550 of the Financial Code, *except a conviction for which relief has*
18 *been granted pursuant to Section 1203.49.*

19 (B) Every arrest for a violation or attempted violation of an
20 offense specified in Section 550 of the Financial Code for which
21 the applicant is presently awaiting trial, whether the applicant is
22 incarcerated or has been released on bail or on his or her own
23 recognizance pending trial.

24 (p) (1) This subdivision shall apply whenever state or federal
25 criminal history information is furnished by the Department of
26 Justice as the result of an application by an agency, organization,
27 or individual not defined in subdivision (k), (l), (m), (n), or (o), or
28 by a transportation company authorized pursuant to Section
29 11105.3, or any statute that incorporates the criteria of that section
30 or this subdivision by reference, and the information is to be used
31 for employment, licensing, or certification purposes.

32 (2) Notwithstanding any other provisions of law, whenever state
33 summary criminal history information is initially furnished
34 pursuant to paragraph (1), the Department of Justice shall
35 disseminate the following information:

36 (A) Every conviction rendered against the applicant, *except a*
37 *conviction for which relief has been granted pursuant to Section*
38 *1203.49.*

39 (B) Every arrest for an offense for which the applicant is
40 presently awaiting trial, whether the applicant is incarcerated or

1 has been released on bail or on his or her own recognizance
2 pending trial.

3 (q) All agencies, organizations, or individuals defined in
4 subdivisions (k), (l), (m), (n), (o), and (p) may contract with the
5 Department of Justice for subsequent notification pursuant to
6 Section 11105.2. This subdivision shall not supersede sections that
7 mandate an agency, organization, or individual to contract with
8 the Department of Justice for subsequent notification pursuant to
9 Section 11105.2.

10 (r) Nothing in this section shall be construed to mean that the
11 Department of Justice shall cease compliance with any other
12 statutory notification requirements.

13 (s) The provisions of Section 50.12 of Title 28 of the Code of
14 Federal Regulations are to be followed in processing federal
15 criminal history information.

16 (t) Whenever state or federal summary criminal history
17 information is furnished by the Department of Justice as the result
18 of an application by an authorized agency, organization, or
19 individual defined in subdivisions (k) to (p), inclusive, and the
20 information is to be used for employment, licensing, or certification
21 purposes, the authorized agency, organization, or individual shall
22 expeditiously furnish a copy of the information to the person to
23 whom the information relates if the information is a basis for an
24 adverse employment, licensing, or certification decision. When
25 furnished other than in person, the copy shall be delivered to the
26 last contact information provided by the applicant.